

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

CRAIG R. WARBERG,

Respondent.

NO. C-04-103-05-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO PROHIBIT FROM INDUSTRY
AND COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of February 8, 2005, the Director institutes this proceeding and alleges as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent: Craig R. Warberg (Warberg) was employed as an independent contractor by Rocky Mountain Mortgage, Inc. (Rocky Mountain), a licensed mortgage broker, from August 13, 2002 until September 18, 2003. Warberg was employed as an independent contractor by Columbia Resources, Inc. (Columbia), a licensed mortgage broker, from approximately October 2003 until April 2004. Warberg is known to have conducted business at the following location(s):

Rocky Mountain Mortgage
7111 NE 179th St. Ste F
Vancouver, WA 98686

Columbia Resources
2700 NE Andresen Ste D-28
Vancouver, WA 98684

1 **1.2 Investigation:** The Department received information in August 2003 that Warberg had embezzled
2 funds from Rocky Mountain. The Department initiated an investigation to review the allegations against
3 Warberg. This investigation culminated in a referral to the Office of the Clark County Prosecutor for possible
4 criminal charges.

5 **1.3 Criminal Conviction of Felonies:** On October 14, 2004, in the Superior Court of Clark County,
6 Washington, Cause No. 04-1-00525-6, Warberg was found guilty, on plea of guilty, of four felonies:

7 **A. Forgery – RCW 9A.60.020(1)(a)/RCW 9A.60.020(1)(b):** Warberg falsely made, completed or
8 altered a check drawn on the account of Columbia, which check was made payable to him and
9 purportedly signed by an authorized signer, and presented the check for payment, knowing that it
10 was forged.

11 **B. Unlawful Production of Payment Instruments – RCW 9A.56.320(1):** Warberg printed or
12 produced a check drawn on the account of Columbia without the permission of Columbia.

13 **C. Theft in the Second Degree – RCW 9A.56.020(1)(a) and RCW 9A.56.040(1)(a):** Warberg
14 wrongfully obtained \$700.00 in fees from a consumer as part of a mortgage loan transaction, with
15 the intent of depriving the true owner of the property.

16 **D. Theft in the Second Degree – RCW 9A.56.020(1)(a) and RCW 9A.56.040(1)(a):** Warberg
17 wrongfully obtained \$700.00 in fees from a consumer as part of a mortgage loan transaction, with
18 the intent of depriving the true owner of the property.

19 **1.4 Sentence:** As a result of Warberg's conviction of the four felonies described in Paragraph 1.3 above,
20 judgment and sentence was ordered against Warberg as follows:

21 **A. Restitution, Fees and Fines:** Warberg was ordered to pay to the Clerk of the Court \$47,425.30 in
22 restitution for various parties named in the Order. Warberg was also ordered to pay \$1,970.00 in
23 other fees and fines.

24 **B. No Contact:** Warberg was ordered not to have contact with various named persons for five years.

25 **C. Confinement:** Warberg was ordered to serve ninety days of confinement in the custody of the
26 Clark County jail.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(iii), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license.

2.2 Authority to Charge Investigation Fee: Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and seventy-eight cents (\$47.78) per hour that each staff person devoted to the investigation.

III. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

3.1 Respondent Craig R. Warberg be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of ten (10) years; and

3.2 Respondent Craig R. Warberg pay an investigation fee in the amount of \$1373.67 calculated at \$47.78 per hour for 28.75 staff hours devoted to the investigation.

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1 **IV. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry and Collect
3 Investigation Fee is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW
4 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative
5 Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF
6 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of
7 Charges and Notice of Intention to Enter an Order to Prohibit from Industry and Collect Investigation Fee.

8
9 Dated this _____ day of February, 2005.

10
11 _____
12 CHUCK CROSS
13 Director and Enforcement Chief
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

17 _____
18 Ned Jursek
19 Financial Legal Examiner
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RCW 19.146.010 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

...
(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

...
(14) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person:
• Is convicted of the crime in any jurisdiction;
• Is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;
• Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
• Has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

(15) "Department" means the department of financial institutions.

...
(17) "Director" means the director of financial institutions.

...
(22) "Independent contractor" or person who independently contracts" means any person that:
• Expressly or impliedly contracts to perform mortgage broker activities for a licensee;
• With respect to its manner or means of performing the activities, is not subject to the licensee's right of control; and
• Is not treated as an employee by the licensee for the purposes of compliance with federal income tax laws.

...
(24) "License" means a license issued by the director to engage in the mortgage broker business.

(25) "Licensee" or "licensed mortgage broker" means:
• A mortgage broker licensed by the director; and
• Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

(26) "Loan originator" means a natural person:
• Who is a mortgage broker employee who performs any mortgage broker activities; or
• Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the performance of any mortgage broker activities.

...
[1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:
(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);
(b) Suspend or revoke licenses for:
(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;
(ii) Failure to pay a fee required by the director or maintain the required bond;
(iii) Failure to comply with any directive or order of the director; or
(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;
(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

- (i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or
- (ii) Failure to comply with any directive or order of the director;
- (d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:
- (i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or
- (ii) Pay restitution to an injured borrower; or
- (e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:
- (i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or
- (ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;
- (iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or
- (iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director -- Hearing -- Sanction.

The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

[1994 c 33 § 13.]

RCW 19.146.223 Director -- Administration and interpretation.

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

[1994 c 33 § 2.]

RCW 19.146.228 Fees -- Rules -- Exception.

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

1 Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation
2 determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the
3 complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the
authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account
is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this
chapter shall be deposited in the consumer services account.

4 [2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

5 **RCW 19.146.230 Administrative procedure act application.**

6 The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and
imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall
be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

7 [1994 c 33 § 16; 1993 c 468 § 10.]

8 **RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.**

9 For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by
a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every
licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act
under or without the authority of this chapter. For that purpose the director and designated representatives shall have access
during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults
of all such persons.

11 The director or designated person may direct or order the attendance of and examine under oath all persons whose
testimony may be required about the loans or the business or subject matter of any such examination or investigation, and
may direct or order such person to produce books, accounts, records, files, and any other documents the director or
designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and
testify, or does not produce the requested books, records, files, or other documents within the time period established in the
directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling
production of books, records, files, or other documents. No person subject to examination or investigation under this
chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other
information.

15 Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or
places of business to conduct a compliance examination. The director may examine, either personally or by designee, a
sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and
undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter.
17 For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have
been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the
18 director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been
taken or to investigate a complaint.

19 [1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

WAC 208-660-060 Department's fees and assessments.

(1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

WAC 208-660-061 Fee increase.

The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.]